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DONNA CORBELLO

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONNA CORBELLO, an individual,

Plaintiff,

vs.

THOMAS GAETANO DEVITO, an
individual, *et al.*,

Defendants.

Case No. 2:08-cv-00867-RCJ-PAL

**PLAINTIFF'S MOTION FOR LEAVE
TO FILE CERTAIN EXHIBITS
UNDER SEAL FOR HER *REPLY* IN
SUPPORT OF *MOTION FOR
RECONSIDERATION* (DOC. 347)**

Plaintiff Donna Corbello, by her attorneys, and pursuant to the *Stipulated Protective Order* (Doc. 94) entered into by the parties, and the Court's *Protective Order Governing Confidentiality of Documents* entered on January 5, 2009 ("Order Regarding Sealing Requirements") (Doc. 95), herewith requests leave to file certain additional documents under

1 seal as exhibits to her *Reply to Defendant's Response to Motion for Reconsideration* and
 2 *Supplement* (Docs. 354 & 355), currently scheduled to be filed on or before January 18, 2011.¹

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 Pursuant to her obligations under the *Stipulated Protective Order* and *Order Regarding*
 5 *Sealing Requirements*, Plaintiff seeks an order permitting her to file the following documents
 6 under seal, which were produced by Defendants Frankie Valli, Robert J. Gaudio, Marshall
 7 Brickman, and/or Eric S. Elice, and marked "CONFIDENTIAL" and "HIGHLY
 8 CONFIDENTIAL" thereby, which she intends to attach as exhibits to her *Reply*:

- 9 • JB-0014949–JB-0014950, and JB-0024249–JB-0024250, consisting of documents
 10 referenced in *Defendants' Response to Plaintiff's Motion for Reconsideration*, but
 11 not filed with the Court; namely, a facsimile cover letter sent to Defendant
 12 Gaudio, and the cover page, and first page, of a 116-page draft of "Act I" of
 13 *Jersey Boys*.
- 14 • JB-007860, consisting of an email from Defendant Elice to Peter Bennett
 15 concerning the initial filing of this action in Texas, dated December 31, 2007.

16 **I. ARGUMENT**

17 There is an exception to the normal presumption of access to judicial records, for "sealed
 18 discovery document[s] [attached] to a non-dispositive motion," such that "the usual presumption
 19 of the public's right of access is rebutted." *Kamakana v. City & County of Honolulu*, 447 F.3d
 20 1172, 1179-1180 (9th Cir. 2006) (citing *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1213
 21 (9th Cir. 2002)). The public has less of a need for access to court records attached only to non-
 22 dispositive motions because those documents are often "unrelated, or only tangentially related,
 23 to the underlying cause of action." *Id.* (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33,
 24 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984)). Moreover, "public policies that support the right of
 25 access to dispositive motions, and related materials, do not apply with equal force to non-
 26 dispositive materials." *Id.* (citing *Phillips*, 307 F.3d at 1213). Finally, when a district court
 27

28 ¹ Pursuant to the Court's *Order* (Doc. 384) of January 13, 2011, and Fed. R. Civ. P. 6(a)(1)(C) and 6(a)(6)(A), the
 current deadline for filing Plaintiff's Reply is January 18, 2011.

1 grants a protective order to seal documents during discovery, “it already has determined that
 2 ‘good cause’ exists to protect this information from being disclosed to the public by balancing
 3 the needs for discovery against the need for confidentiality.” *Id.* Accordingly, “good cause”
 4 exists for the filing of the foregoing documents under seal.

5 Pursuant to the *Stipulated Protective Order* herein, Plaintiff has an obligation to maintain
 6 the confidentiality of any document marked “CONFIDENTIAL” or “HIGHLY
 7 CONFIDENTIAL” by an opposing party, and the documents identified above were so marked by
 8 the New Defendants. Accordingly, Plaintiff may not file the documents with the Court without
 9 obtaining an Order and/or filing them under seal. Whereas, Plaintiff’s *Reply* is not a dispositive
 10 motion, the filing of these documents under seal falls within the exception to the general
 11 presumption of public access carved out by the courts of this Circuit for documents attached to
 12 non-dispositive motions. Accordingly, leave to file the subject documents under seal should be
 13 granted.

14 **II. CONCLUSION**

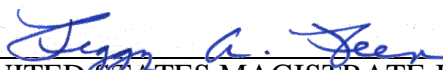
15 IN VIEW OF THE ABOVE, Plaintiff respectfully requests that her present motion be
 16 granted.

17 Dated: January 17, 2011

18 RESPECTFULLY SUBMITTED:

19
 20 /s/Gregory H. Guillot
 21 Gregory H. Guillot
 22 George L. Paul
 23 John L. Krieger
 24 Robert H. McKirgan
 25 Attorneys for Plaintiff, Donna Corbello

26 IT IS SO ORDERED:

27 
 28 UNITED STATES MAGISTRATE JUDGE
 DATED: January 18, 2011

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I, Gregory H. Guillot, hereby certify that on January 17, 2011, I electronically filed the foregoing document and this *Certificate of Service* with the Clerk of Court using the CM/ECF system which will send notifications of such filing to the following:

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/s/Gregory H. Guillot